IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7888 OF 2005

Mohd. Shafi Sarfuddin Patel. .. Petitioner.

vs.

The Additional Commissioner,

& Others. .. Respondents.

Mr. Y.S. Jahagirdar i/by Ms. S.D. Khot

& Sooraj Hulke for petitioner.

Mr. R.R. Salvi for respondents.

CORAM : S.U. KAMDAR, J.

DATE : 12th December, 2005.

P.C.:

. The present petition challenges the order passed by the Additional Commissioner, Konkan Division, Mumbai inter alia upholding the order of the Collector by which the petitioner has been disqualified from being continued as a member of the Taloja Panchanand Grampanchayat under Section 14 (J-1) of the Bombay Village Panchayat Act, 1958 as amended from time to time. The learned counsel appearing for the petitioner has placed before me a contention that as on the date when the election

took place i.e. 30.12.2003 the petitioner was disqualified even if the date of the third child birth is taken as 2002. It is his contention that if he was not qualified then he was not entitled to contest the election under section 14 (j-1). However, he has contended that his nomination is accepted for the said election. Once the nomination is accepted then aggrieved party has to file election petition and no application could have been permitted under section 16 (1)(b) of the said Act. It has been contended that if Section 14 (j-1) applied on the date of election then his nomination ought to have been rejected and / or in any event the same is wrongly accepted. It is his contention that thus the said dispute only can be agitated by way of election petition and not by way of his disqualification to continue as an elected member of the Panchayat. In my opinion, the aforesaid contention has no merit. Firstly because even if he was not a qualified member and his nomination is wrongly accepted under the provisions of section 14 still the said section also inter alia provides that no member shall be a member of the Grampanchayat and continue as such. Thus even if he is wrongly elected still he cannot continue as a member of a Panchayat and therefore he can be declared disqualified and ceased to be a member. In my opinion, Section 14 of the Act applies in both eventualities i.e. as on the date of nomination and

even after he is duly elected. Thus even if the election petition is not filed challenging the wrongful acceptance of nomination it does not preclude a party to move an application under section 16 once it comes to the notice that the petitioner is not qualified to continue as a member of the Grampanchayat in terms of section 14 of the said Act. Apart from the aforesaid fact, from the findings which are recorded by the Additional Commissioner it is clear that the petitioner not only has concealed the said fact that he is not qualified but the same has been concealed by putting forward a false name of the second wife and contending that the second wife was not his wife and, therefore, the child of the second wife is not his child. On the documents produced before the authorities, the authorities below have come to the conclusion that the record indicates that the petitioner was a father of the third child and thus the petitioner was not qualified. In that light of the matter, I am of the opinion that the present petition has no merit whatsoever. Petition fails and the same is dismissed. No order as to costs.